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## Remarks

In response to the Request for Continued Examination filed on March 25, 2004 and the Amendment filed on February 24, 2004, the Examiner rejected remaining claims 1-5 and 7-12 under 35 U.S.C. § 103(a) as being unpatentable over Lubera et al. (United States Patent Application Publication No. 2001/0046426) in view of Tajima et al. (United States Patent No. 6,485,048).

As provided by Section 2143.03 of the MPEP:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of the claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ 2d 1596 (Fed. Cir. 1988).

In rejecting independent claims 1, 7 and 10, the Examiner states that:

Lubera et al. disclose a snap-in air bag assembly (#304) for a vehicle (#300) having a roof rail, comprising an air bag module (#304) including an air bag inflator (#324) and an air bag (#336, not labeled in figure 15) with at least one cushion retention tab (#340) a snap-in clip (#10a) permanently attachable (via wing members #100) and flange #62) to a vehicle structure (#308) and selectively attachable (via #74) to the at least one cushion retention tab, the snap-in clip including a fastening portion (helical lip #72), and a removable serviceability attachment feature (fastener #74) for attaching the air bag module at the at least one cushion

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*retention tab* to the snap-in clip by fastening the serviceability attachment feature to the fastening portion of the snap-in clip (paragraph 0042, lines 1-4), and for selectively detaching the air bag module from the snap-in clip for removal of the air bag module for service by removing the serviceability attachment feature from the fastening portion of the snap-in clip (similar to use with the headliner configuration; paragraph 0039, lines 5-10). (italics added)

As noted by the Examiner, air bag 336 is not shown in Figure 15 of Lubera et al. In fact, although an airbag 336 is mentioned at column 4, line 8, it is not shown in any of the drawings, nor is its positioning with respect to the clip 10a described. Importantly, the Examiner misidentifies a mounting flange 340 of reaction canister 332 as a cushion retention tab. Lubera et al. state that:

The reaction canister 332 includes a mounting flange 340 having a plurality of holes 344, each of which is sized to receive a threaded fastener 74. (col. 4, lines 8-10)

Accordingly, as shown in Figure 15 of Lubera et al., the mounting flange 340 is disposed directly between the fasteners 74 and the clips 10a. While this location is suitable for a typically rigid or semi-rigid mounting flange 340 of a canister 332, it would not be a suitable location for a cushion retention tab as the cushion material would be subjected to localized forces at the fastener 74 as the cushion inflates and/or would tend to slip over the small head of the fastener 74. Additionally, as noted, at column 7, lines 6-8, and referring to Figure 2 of Lubera et al.:

The configuration of the abutting flange 102 prevents the technician from seating the fastener 10 too deeply.

Accordingly, the flanged portion 62 (see Figure 2) of the fastener 10a of Figure 15 is raised with respect to the air bag aperture 312 after insertion of the fastener 10a into the slotted aperture 316.

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Thus, the so-called cushion retention tab 340 would lie across the sharp edges of the raised flange portion 62, creating the potential for tearing. Accordingly, Lubera et al. in view of Tajima et al. do not disclose "an air bag *with at least one cushion retention tab*", "a snap-in clip . . . selectively attachable *to the at least one cushion retention tab*", nor "a removable serviceability attachment feature for attaching the air bag module *at the at least one cushion retention tab*", as required by independent claims 1 and 10. Similarly, Lubera et al. in view of Tajima et al. do not disclose "attaching a snap-in clip . . . *to the at least one cushion retention tab*" as required by claim 7. Thus, the rejection of claims 1, 7 and 10, and their respective dependent claims is believed to be improper.

With respect to the rejection of claims 2-5, 8, 9 and 11, the Examiner admits that Lubera et al. do not disclose the specific features of the side-curtain air bag assembly. The Examiner attempts to use the structure of Tajima et al. to provide these missing features. The Examiner notes that Tajima et al. teach at least one cushion retention tab 26 (referred to in Tajima et al. as an "installation portion of the bag"; installation bracket 28 incorrectly referred to by the Examiner as part of the so-called retention tab) and a mounting bracket 33c (referred to in Tajima et al. as an installation portion of the inflator bracket). Furthermore, the Examiner notes that the "location of bolt [35] [is] similar to location of Lubera et al.'s serviceability attachment feature". However, as shown in Figure 4 (first embodiment), Figure 11 (second embodiment) and Figure 19 (third embodiment), the so-called serviceability attachment feature (bolt 35) and the mounting bracket 33c are not even in physical proximity to the clip 37 and the cushion retention tab 26. As stated at column 6, lines 27-36 of Tajima et al. with respect to the installation portion 26 (Examiner-named cushion retention tab):

An installation hole 26a, through which an installation bolt 29 passes is provided in each installation portion 26, as shown in FIGS. 3 and 4. Each installation portion 26 is further provided with an installation bracket 28 made from a metal plate. Each installation portion 26 is installed together with the installation bracket 28 *by means of the installation bolt 29* to an inner panel 2 on the roof side rail portion RR. The inner panel 2 is

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provided with a nut 2d for screwing the bolt 29. The nut 2d is fixed *in a location of the installation hole 2c.* (italics added)

In contrast, with respect to the so-called mounting bracket 33c, Tajima et al. provide at column 6, lines 63-67 and column 7 lines 1-4:

The installation portion 33c comprises installation holes 33d provided in two places. *An installation bolt 35* passes through each installation hole 33d. The installation bolts 35 are used for installing the inflator 31 in the interior panel 2 on a side of a body 1. The interior panel 2 is provided with a nut 2b for screwing the bolt 35. The nut 2b is fixed *in a location of an installation hole 2a.* (italics added)

Thus, Tajima et al. teach that the installation portion 26 (Examiner-named cushion retention tab) is installed with installation bolt 29 and nut 2d at installation hole 2c while installation portion 33c (Examiner-named mounting bracket) is installed with bolt 35 (Examiner-named serviceability attachment feature) and nut 2b at installation hole 2a.

Accordingly, because, as discussed above, Lubera et al. do not disclose "an air bag with at least one cushion retention tab" as required by independent claims 1,7 and 10 and because the cushion retention tab 26 of Tajima et al. is at a different location than the clip 37, serviceability attachment feature 35 and mounting tab 33c, Lubera et al. in view of Tajima et al. do not disclose, suggest or make obvious "a mounting tab for receiving the serviceability attachment feature *and for capturing the at least one cushion retention tab* between the inflator bracket and the snap-in clip", as required by claim 2, or "capturing *the cushion retention tab* between the mounting tab and the snap-in clip" as required by claim 9. Additionally, Lubera et al. in view of Tajima et al. do not disclose "an attachment portion having a mounting tab for receiving the serviceability attachment feature *and for capturing the at least one cushion retention tab between the inflator bracket and the snap-in clip*", as required by claim 11. Accordingly, at least for these reasons also, the rejection under Section 103(a) of claim 2, claims 3-5 which depend therefrom, claim 9, and claim 11 is believed to be overcome.

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Furthermore, neither Lubera et al. nor Tajima et al. provide a suggestion or motivation to attach the snap-in clip at the at least one cushion retention tab using the removable serviceability attachment feature, as required by the quoted language of claims 1,7 and 10 described above. Any inference of this teaching from Lubera et al. and Tajima et al. is hindsight reasoning based upon the teachings of the present application. The Federal Circuit makes clear that the best defense against the subtle but powerful attraction of impermissible "hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." *In re Dembiczak*, 175 F.3d 994, 998, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999). See also, e.g., *C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998) (describing "teaching or suggestion or motivation [to combine]" as an "essential evidentiary component of an obviousness holding"); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("the Board must identify specifically . . . the reasons one of ordinary skill in the art would have been motivated to select the references and combine them"); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (examiner can satisfy burden of obviousness in light of combination "only by showing some objective teaching [leading to the combination]"); *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988) (evidence of teaching or suggestion "essential" to avoid hindsight); *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 297, 227 USPQ 657, 667 (Fed. Cir. 1985) (district court's conclusion of obviousness was error when it "did not elucidate any factual teachings, suggestions or incentives from this prior art that showed the propriety of combination"). See also *Graham*, 383 U.S. at 18, 148 USPQ at 467 ("strict observance" of factual predicates to obviousness conclusion required). Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight. See, e.g., *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985) ("The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time.").

The showing of a suggestion or motivation must be clear and particular. See,

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e.g., C.R. Bard, 157 F.3d at 1352, 48 USPQ2d at 1232. Broad conclusory statements regarding the teaching of multiple references, standing alone, are not "evidence." E.g., McElmurry v. Arkansas Power & Light Co., 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993) ("Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact."); In re Sichert, 566 F.2d 1154, 1164, 196 USPQ 209, 217 (CCPA 1977) ("The examiner's conclusory statement that the specification does not teach the best mode of using the invention is unaccompanied by evidence or reasoning and is entirely inadequate to support the rejection.").

Applicants disagree with the Examiner's statement that "it is old and well known in the art that snap-in clips of the type disclosed by Lubera et al. are particularly advantageous for blind assembly processes, such as installation of a roof rail air bag from outside the vehicle." The Examiner has not presented evidence of such knowledge in the art. The single reference Lubera et al. is not sufficient evidence of common knowledge, especially when, as noted by the Examiner, "the Lubera et al. reference does not disclose the details of the roof rail air bag assembly." Furthermore, although the Examiner asserts that roof rail air bag assemblies are old and well known in the art, Applicant's claimed roof rail air bag assembly is not.

Accordingly, at least for these reasons also, the rejection under Section 103(a) of claims 1, 7 and 10, as well as claim 2, which depends from claim 1, claim 3, which depends from claim 2, claim 4, which depends from claim 3, claim 5, which depends from claim 4, claim 8, which depends from claim 7, claim 9, which depends from claim 8 and claim 11, which depends from claim 10, is believed to be overcome.

#### Conclusion

This Reply is believed to be fully responsive to the Office Action mailed June 23, 2004. The remarks in support of the rejected claims are believed to place remaining independent claims 1, 7 and 10, as well as claim 2, which depends from claim 1, claim 3, which depends from claim 2, claim 4, which depends from claim 3, claim 5, which depends from claim 4, claim 8,


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which depends from claim 7, claim 9, which depends from claim 8 and claim 11, which depends from claim 10, in condition for allowance, which action is requested.

No additional fee is believed to be due. However, please charge any fees that may be associated with this paper to deposit account 07-0960.

Respectfully submitted

  
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LCH:vlg